THE CASE

OF

WILLIAM WITHERINGS Esq;

Concerning the Forraigne Post-Office.

23. April 17. Jac.

KING *James* erected a new Office to continue for ever, called the *Post-Master of England for Forraign parts, being out of the Dominions of him his heirs and successours*, and made *Matthew Dequester* the father, and *Matthew* the son the present Officers during their lives and the life of the longest liver of them.

25. Mar. 7. Car. primi.

Our late Soveraign Lord King *CHARLES* by Patent (reciting the death of *Dequester* the son) granted the said Office to *William Frizell* and *Thomas Witherings* during their lives and the life of the Surviver from the death or determination of the Estate of *Dequester* the father.

William Frizell and *Thomas Witherings* assigne the said Office to *John Hat*.

John Hat assignes the same to *John Beauchamp*.

John Beauchamp assignes the same to the said *Thomas Witherings* whereby he became solely invested with the advantage of his own life and the life of Mr. *Frizell*, who is still living and very ancient.

Afterwards by some more assignments made of the said Office, the same remains in certain persons in trust for the said *Thomas Witherings* and his assignes and other uses.

June 22. 13. Carol. primi.

"Our said late *King* erects an other new Office called the Letter Office of *England*, and grants the same to the said *Thomas Witherings* for "his life, being a person that had highly merited by the settlement of the Forraign *Post-Office* which he bought, and with indefatigable "pains spent 16. years time for the settling of the same with all Nations and Christian Princes to run day and night in that way that had "not been understood before by any other, which settlements and agreements were confirmed by their several Councils to the great advancement of his Majesties Customes and service, and the unvaluable and perpetual benefit of these Kingdomes in point of Trade and "correspondency in general.

As may appear upon record.

Witherings *by his Petition and Affadavit annexed, averred, that the Office stood him in at least* 10000. l. *and that out of the Forraign Office he paid all the Kings expresses, which with the charge of the Inland Post (of which he likewise eased his Majestie,) was wont to cost the King about* 9000. l. per annum *in expresses*.

15. Carol. p. imi.

So that now *Witherings* had two distinct Offices, both which were duly executed and quietly enjoyed by him until *June* 16. *Carol. At which time* Witherings *upon some misinformation against him to the King was illegally suspended from the execution thereof, and the same was committed to one* Burlamachy, *who was the person that attempted to incroach upon* Witherings *freehold. Howbeit, upon a due representation and hearing of the matter, and a right understanding thereof had, his Majesty restored the said* Witherings *not only to the execution of the said Forraign Office, but also to the mean profits thereof taken during his suspension, which was rendred to him accordingly*, and he continued in the same during his life. And albeit, the sequestration of the other Office was voted by the Parliament to be illegal, and ought to be taken off, yet by the great power of Mr. *Prideaux*, who slipt into the execution thereof: the said Mr. *Witherings* was by force during some part of the latter end of his life deprived of the same.

Thomas Witherings dying, his interest in the Office called the Letter Office determined, "But his Interest in the Forraign *Post-Office* "was lawfully devolved upon *William Witherings*, who enjoyed the same after the death of *Thomas Witherings*, untill the last of *June* in "the year 1653. which was above twenty years possession. And then was the said *William Witherings* by that unjust power which then "usurped the Government of this Realm outed of his said possession contrary to all Law and Justice, without any crime alledged against "him, or any pretence of accusation whatsoever other then this, *that as the affairs of State then stood he was not to be trusted*. And "ever since he hath been kept out by power to his great oppression and impoverishment.

31. June 1653.

The Lord Stanhops pretences are further answered in the answer to his printed case.

As for any pretence that the Lord *Stanhope* can make to the Office of Forraign *Post-Master*; it is very easily and clearly answered: for first, his Patent was not for any Forraign parts that are out of the Kings dominions, but only for such parts as are within the Kings dominions, and that by expres words. But secondly, admitting the pretence, yet the Patent was void in Law as to the now Lord *Stanhope*; it being made to his father for his life, and after to himself for life, he being an Infant at the time of the Grant, and not capable of such an Office. Thirdly, admitting the Grant so made as is pretended, and that it was a good grant in Law, yet was the same afterwards surrendred by the Lord *Stanhope* himself, and vacated as appears upon Record at the Chappel of the Rolles, *which surrender was made before the erection of the Letter Office granted to Mr.* Thomas Witherings: So that it is very clear that Mr. *Thomas Witherings* had during his life a good and lawful title to both the said Offices. And that after his said death *William Witherings* hath during Mr. *Frizels* life a good title to the Forraign Office: & now hopeth that his great oppression & damage for these years last past, (so publickly known) and the great age of him, for whose wasting life he is interessed, will be taken into consideration, especially in regard that what concerns the said *William Witherings* doth in consequence concern all the Subjects of these Kingdomes in the enjoyments of their freeholds, and whatsoever else they possess. And also hopeth that he shall be restored to the execution of the said Forraign *Post-Office*, and that he may have free liberty to take his remedy at Law for the mean profits that have been wrongfully received during the time of his unjust suspension.

Memorandum That by this case Wms Witherings nor anie graunt is made to his Sutors Letter Office, nowise disposable at his Mats pleasure. But to his Office of Post mr for forraigne parts onely his Mats dominions, according to Letters Patents under the great Seale.

The Caſe and Title.

THE Earl of *Exeter* with divers other Lords and Gentlemen are Proprietors and Owners in poſſeſſion, and Commoners by undoubted right and Title in the Law, by ſeveral and reſpective decents, and purchaſes of 36000 Acres of Fen and Meadow ground, lying between the Rivers of *Glenn*, and *Kyme Eay*, in the County of *Lincoln*, and of ſeveral Mannors, and Lordſhips adjoyning thereunto: And wherein the ſaid Lords, and Owners, their Farmers and Tenants, have Common appendent to their Lands adjoyning, and particularly the ſaid Earl of *Exeter* is there ſeiſed of the Mannors of *Bourne*, *Morton*, and *Byker*; and of the Soyl and Royalty of *Bruvage*, for about 14 miles together in the ſaid Fen, and Meadow-ground.

The grievances committed by the Dreyners.

The Lords and Owners being eſtated and poſſeſſed as aforeſaid, the now pretended Dreyners (*Anno* 1635) by colour of a Contract with certain Commiſſioners of *Sewers* (themſelves being the chief in Commiſſion) entred into and upon the ſaid Level, and without conſent of the Owners, without Inquiry by Jury, againſt an expreſs Verdict whereby the ſaid Level was found not ſurrounded, and conſequently not at the diſpoſal of the Commiſſioners of *Sewers*: And alſo notwithſtanding the Exceptions, Suits publick and private, Complaints of the Owners and Commoners, endeavoured to poſſeſs themſelves of 14000 Acres thereof, encompaſſed the ſame with Banks and new Dreyns, ſtopt the old ones, whereby at length ſuch inundations fell upon the Neighbouring Towns, they were conſtrained (the Dreyners refuſing to appear and juſtify their proceedings upon Actions of Law brought againſt them, for the preſervation of their Lives and Goods, being authorized in that behalf by Commiſſioners of *Sewers*) to open the old Dreyns, ſince which the ſaid Level hath been and now is peaceably enjoyed by the Lords, Owners and Commoners as the ſame hath been from time, whereof the Memory of man is not to the contrary.

The preſent Queſtion.

Theſe Dreyners now deſire to be Eſtated in the aforeſaid 14000 Acres by Act of Parliament, upon pretence of their Improvement and former poſſeſſion thereof.

The Lords Owners and Commoners pray that they may not be ſtript of their Eſtates upon ſuch pretences, the Premiſes are a true ſtate of the Caſe, Title, and Queſtion in difference; and deny divers Pretences and Allegations, in the Propoſals and Narrative of the Dreyners contained to be true; That is to ſay,

Dreyners falſe Pretences.

1. They deny, That the ſaid Dreyners were ever in a juſt, lawful or quiet poſſeſſion of 14000 Acres of the ſaid Level, For
The ſaid Poſſeſſion (ſuch as the ſame was) was obtained illegally only by Colour of a Commiſſion of *Sewers*, but without due proceedings thereupon, and not warrantable by Law, Statute or Precedent.

2. The poſſeſſion was interrupted by Claims, Entryes, Diſtreſſes, and Actions brought by the Owners and Commoners, as appears by divers Records, and other Teſtimonies.

2. They deny that a Contract was made with the Dreyners to give them 24000 Acres by approbation of many thouſand Commoners, For
No ſuch thing was ever yet proved, and the enſuing Complaints, Suits, and Actions of the Owners and Commoners evidence the contrary.

3. They deny that the undertaking to Dreyn the Level was ever performed, For,
The Level in general (the 14000 Acres intended for the Dreyners themſelves excepted) was not bettered by the pretended Dreyning, nor the new Dreyns ſo effectual and uſeful as the old Dreyns, which the Dreyns had ſtopped.

4. They deny that the Dreyners by their dreyning improved the 14000 Acres to a Mark an Acre annual value, For
The ſame was of as great yearly value and profit 40 and 50 years before, as we are ready to prove.

5. They deny that the Title or Contract, under which theſe Dreyners claim, is the ſame with *Lovels Level*, *Bedford Level*, and other former undertakings, For

1. *Lovels Dreyning* was by general conſent after the awarding of a Writ of *ad quod damnum*.
2. *Bedford Level* was by verdict found to be ſurrounded ground and of no value, *Lyndſey Level* was by verdict found not ſurrounded, and proved of a good yearly Value.
3. *Bedford Level* was contracted for with the Owners and Country at *Lynn* 6 *Car. primi*, and after Dreyned; *Lyndſey Level* never contracted for with the Owners and Country, but reſted from them by Power and Force.

The undertaking in *Bedford Level* was begun, and purſued legally, and finiſhed, and continued to the Honour and Profit of the Undertakers and Country.

The undertaking in *Lyndſey Level* was moſt illegally begun, violently and injuriouſly purſued, and never finiſhed to this day, proving only vexatious and miſchievous both to the undertakers and Country.

6. They deny that the Lords and Owners (who continually offered and ſtill offer to defend their Right by Law) either committed or abetted any Riot, or the pulling down the Dreyners Houſes or Plantations, but what their oppreſſions conſtrained poor people to do, or may conſtrain them unto in the future, the ſaid Lords and Owners know not: but have heard what ever Riot was, the ſame was occaſioned by one *Hull*, Servant to the late *Earl* of *Lindſey*, who is ſuppoſed to be ſtill living to give account thereof, and the ſaid Lords, and Owners, are unjuſtly Scandaled therewith, not being concern'd in Suit or in Law to excuſe or anſwer it.

7. They ſay the queſtion is miſ-ſtated to be now between the Riotters and Dreyners, but between the Dreyners and Owners, which ſhall be preferred to improve theſe Lands.

Their Propoſals Anſwered.

The Dreyners Propoſals, which are but three in number, are conceived by the ſaid Lords and Owners unjuſt and unreaſonable, being as followeth:

1. *Propoſal.* That the Dreyners ſhould have 14000 Acres of the Level, with help to repair the Works by them erected.

Anſwer 1. Theſe Owners conceive it unjuſt and unreaſonable that 14000 Acres of Land ſhould be demanded from the Owners thereof without Right and without Price for the ſame, and without Crime or pretence other than the ſcandal of a Riot.

2. The Lords and Owners conceive it moſt unjuſt and unreaſonable, the Dreyners ſhould both divide and chuſe not only ſo much in quantity but the beſt Land in quality, their 14000 Acres being the heart and middle of the Level, ſecured by Banks and Dreyns from the Upland-waters, unto which the reſt is left liable.

3. They are ready to prove that 14000 Acres are more by ſome Thouſands of Acres than the pretended Dreyners can claim by their own pretended contract made by and with themſelves.

4. The Lords and Owners conceive it moſt unjuſt and unreaſonable that they ſhould be required to contribute to the repairs of thoſe Works, by which themſelves and the Country ſuſtained ſuch miſchief, and which were erected without leave to excuſe them, or Law to juſtifie them: And they conceive this Propoſal deſigned purpoſely to prevent the demand of Satisfaction for the aforeſaid injuries ſuſtained by the Country.

2. *Propoſal.* That the Dreyners when eſtated by Act of Parliament in 14000 Acres will be contented to Sell them to the Country for their Money diſburſed with Intereſt.

Anſwer 1. This were to abuſe the Juſtice and Authority of Parliament, to deveſt men of their Eſtates, to the end they may be put to buy them again.

2. The Lords and Owners having undoubted right in the Premiſes by Purchaſes already made and paid for, 'twere unjuſt and unreaſonable they ſhould Re-purchaſe their own Lands.

3. If theſe Dreyners (as probably it may be) by their projects in improving other mens Lands, have ſpent more than the Lands are worth, 'tis not reaſonable they ſhould be reimburſed out of their purſes whom they have wronged.

3. *Propoſal.* That the Dreyners will accept of the Intereſt of the Lords and Owners, and be obliged to double every mans Profit in the Level.

Anſwer 1. If this offer ſhould Intitle the pretended Dreyners to this Level, they may in like manner Intitle themſelves to all the Common and Waſt-ground in *England*; not that they mean or can improve the Nature of the Soyl by Dreyning, but by altering the manner of Enjoyment from Common to Incloſure, when they have the whole to themſelves, the Commoners excluded: by which means, if the ſame were lawful for the Owners to do (as the ſame is not) but expreſly againſt the Letter of divers Statutes, they could themſelves treble every mans Profit.

2. Commons are not to be valued according to the ſingle profit made thereof, but as they Benefit and Maintain arable Land to which they belong, and which cannot conſiſt without them: therefore,

3. The Policy of this Propoſal to get the whole Level under the ſpecious pretence of doubling each mans profit, would (to compaſs the Dreyners deſign) deſtroy Forty Neighbouring Townſhips conſiſting in Tillage, which cannot be maintained without Common.

Upon Conſideration whereof,

It is Humbly deſired on the behalf of the Lords, Owners and Commoners, that they may be protected and defended in their Rights and Inheritances, according to the Laws and Statutes of this Realm, and quieted againſt ſuch unreaſonable Propoſals as aforeſaid, being but endeavours (under the ſpecious pretence of Improvement) to get other mens Lands, without Title, Conſideration, Conſent, Verdict or Legal Eviction.